

and that they will have the legally required access to OSS that will permit them to compete effectively through the use of resale or unbundled elements. In addition to these those deficiencies, BellSouth has failed to show that unbundled elements are currently offered, or will be offered in the future, at prices that will permit entry and effective competition by efficient firms, and has failed to show that it will provide objective measures of its wholesale performance that will insure that competitors receive non-discriminatory access to inputs now in the future.

(FLA100) BellSouth appears to providing several, but not all, requested unbundled network elements to competing carriers. In addition, ALECs are experiencing problems with the billing of UNEs, and with the interfaces used to access BST's operations support systems. These problems are contrary to the non-discriminatory requirements of the Act, the applicable FCC rules and orders, and the FPS the arbitration order.

(FLA 165) Staff also notes that BellSouth would have you believe that it's unbundle local loops are functionally available and that some have been provisioned in the state of Florida. However, the FCC concluded in the Ameritech order that pricing UNEs at tariff rates does not meet the BOC's obligation to provide network elements as unbundled network elements.

(FLA174) This commission has established that usage sensitive UNEs will be billed via CAB or that those bills will be CAB-formatted. Staff would note that BellSouth has not complied with either. Staff is therefore unable to determine if BellSouth has unbundled local transport from other services. Hence, BellSouth is not with compliance of checklist item v.

(FLA241) Staff also notes that an ALEC ordering from the SGAT could only obtained RI-PH or LERG through the bona fide request process since the SGAT offers only RCF and DID. Staff believes that since the commission required BST to provide RCF, DID, RI-PH, and LERG upon request the SGAT should offer these interim number portability solutions, and it clearly does not, Therefore staff recommends that the commission deny the portion of the proposed SGAT regarding interim number portability

(FLA252)On cross-examination, BST witness Varner argued that the FCC has identified ISP traffic as interstate, but has granted an access exemption specifically for ISP traffic. He stated that the FCC has required that ISP traffic be charged at local rates. He also admits that this dispute is the subject of two FCC proceedings and has been taken up in other states where BOCs have taken the same actions as BST. Witness Varner declined to characterize this issue as a "dispute," but rather as an issue "where there are two points of view as to how it should be resolved." Varner stated that he was not familiar with dispute resolution clauses in ALEC

contracts. The staff would note, however, that he did voluntarily refer to dispute resolution procedures in the context of the polls, conduits, and right-of-way issue.

Staff believes that BST has in fact violated the terms of its agreements with ALECs by the actions it has taken.

Thus, without going to the merits of the issue, it is clear that 1) BST/ALEC agreements defined local traffic, and there are no restrictions with respect to ISP traffic; 2) this issue was never raised in interconnection negotiations with ALECs prior to signing the agreements; 3) there are procedures for handling disputes in the agreements, and 4) BST has not followed those procedures, thus violating the terms and conditions of those agreements.

We therefore disagree with witness Varner's characterization, or more specifically, we believe there is no distinction between his characterization and a dispute.

Staff agrees to the ALEC contentions that BST's unilateral actions violates the dispute resolution provisions of its agreements with ALECs. We do not endorse BST's method of handling this issue in Florida, and we do not believe it reflects well on BST's approach to ALEC carrier relationships. Staff recommends that the parties work to resolve this dispute, and if unsuccessful, bring it before this commission.

(FLA251) We do not attempt to resolve the issue of how ISP traffic should ultimately be handled, in this proceeding. We expect the commission will be asked to do that in the near future as complaints are filed. Whether or not ISP traffic is ultimately required to be treated as local or interstate for compensation purposes, it currently appears local when passed through to network, and is billed by BST as a local call to its customers. Therefore, if BST believed that it needed to be handled in a special fashion, BST needed to specify that clearly in negotiations and its agreements. It did not do this, and in fact, BST itself was apparently paying and billing compensation prior to its letter to ALECs.

#### **XIV. FACILITIES BASED COMPETITION**

##### **A. FACILITIES BASED COMPETITION IS INADEQUATE TO MEET THE STANDARD IN SOUTH CAROLINA**

Because of the pervasive market power of the ubiquitous, interconnected telecommunications network, Congress required that there be a facilities-based competitor to the incumbent RBOC before it would be allowed to enter the in-region, interLATA market. This was the first condition set on entry and has come to be known as Track A. Congress required a facilities-based competitor for both residential and business customers. There is no such competitor or competitors in South Carolina.

(DOJiv) At this time, BellSouth faces no significant competition in local exchange services in South Carolina. Lacking this best evidence that the local market has been opened to competition, the Department cannot conclude that its competition standard is satisfied unless BellSouth shows that significant barriers are not impeding the growth of competition in South Carolina. BellSouth has not done so in this application.

(DOJ32) At this time, BellSouth faces no significant competition in local exchange services in South Carolina. We are not aware of any operational facilities-based local exchange competitor at the present time. As of September 11, 1997, only 572 residential lines and 1785 business lines had been resold in the entire state.

(C7)In examining the record in this case, it is clear that competition for local service in BellSouth's service territory is virtually nonexistent. Consumers do not have a realistic choice of local service providers. Therefore, the CA urges the commission to find that BellSouth entry into the in-region interLATA market is not currently in the public interest.

##### **B. MOVING FROM TRACK A TO TRACK B**

Because Congress understood that entry would be difficult and there would be a variety of incentives and interests at work as the local monopoly was dismantled, Congress gave the RBOCs

an alternative approach, known as Track B. If no request for interconnection were made by a facilities-based competitor, or it could be shown that the competitor did not negotiate in good faith or failed to meet agreed upon timetables, the RBOC could be allowed to enter the in-region InterLATA despite the lack of a facilities-based competition. To qualify for Track B, RBOCs have to show that Track A does not apply. None has done so.

(CA 4) By its testimony in this case, BellSouth has admitted that Track A is currently unavailable to it, since no such competing provider currently exist in South Carolina.

In order to apply for authority under Track B, BellSouth would have to show that no competing provider capable of providing local exchange service to both residential and business customers over its own facilities has requested access and interconnection from the company. Once such a request has been made, as it has in South Carolina by AT&T and others, Track B is unavailable to BellSouth.

(CA 5) Once a request for interconnection has been made, the only way an RBOC may proceed under Track B is if the state Commission certifies that the only provider or providers making the requests for interconnection have failed to negotiate in good faith, or they have failed to comply with the implementation scheduled contained in an interconnection agreement. Neither instance has been alleged in this case. Therefore, at this time, Track B is unavailable to BellSouth in South Carolina.

(FLA 36-37) BST also asserts that the Act requires only that it provide interconnection access to one or more facilities-based providers that, taken together, serve at least one residential and one business customer. The competing carriers in this proceeding asserts that a certain threshold level of competition must exist before a BOC enters interest the intraLATA market.

However, staff believes that a competing provider serving one residential customer and one business customer does not satisfy the requirements of Section 271 (c)(1)(A). Staff believes that a competing provider must actually be in the market and operational. In addition carriers must be accepting requests for service and providing that service for a fee. It could be argued the provision of access and interconnection to one residential customer and one business customer satisfies the requirement of section 271 (c)(1) (A); however, based on our reading of the Act and the Joint Conference Committee Report, staff does not believe that is the intent of the Act. Staff believes that a competitive alternative should be

operational and offering a competitive service to residential and business subscribers somewhere in the state. In addition staff believes that the competitor must offer a true "dial tone" alternative within the state, and not merely offer service in one business location that has an incidental, insignificant residential presents.

(FLA38-39) Staff believes that it is clear that the intent of the Act is that facilities-based competition exist for both residential and business subscribers. In support of staff's belief, the Joint Conference Committee Report states that local exchange service be made available to both residential and business subscribers. Additionally, it states that for a competitor to offer exchange access service to business customers only is not sufficient. Furthermore the Joint Committee Report concludes that resale would not qualify because resellers would not have their own facilities in the local exchange over which they would provide service, thus failing the facilities-based test. Thus, staff believes that it is clear that the intent of the Act is that facilities-based competition exist for both residential and business subscribers.

(FLA50) BST has made no allegations that any of these carriers have negotiated in bad faith or failed to abide by the implementation schedules. Witness Varner asserts that other than some implied intent to offer service when entering into an agreement, there are no implementation schedules in any of the interconnection agreements entered into by BST with competing carriers.

### **C. TRACK B**

Lacking a facilities-based competitor in South Carolina and failing to make a showing the potential competitors have failed to live up to their part of the bargain, BST has tried to redefine the standard by which the competitive situation should be measured. Having failed to meet either the conditions of Track A or Track B, BST claims that if the two are combined, it might pass the Section 271 (c)(1) hurdle. This is impermissible.

(FLA46) Staff generally agrees with the FCC's interpretation of the requirements of section 271 (c)(1) (B)... Specifically, 252 (f) (2) requires that the SGAT meet two criteria:

it must comply with section 252 (d), which requires non-discriminatory cost-based prices, and regulations for

interconnection, network elements, transport and termination of traffic, and wholesale rates; and

must further comply with Section 251, which defines duties of interconnection, unbundled access, and resale.

(FLA50) BST contends that given the wording of this issue, and the circumstances surrounding the development of the wording, the literal answer to the issue would be "no." The intervenors all agree that while BST submitted an SGAT to the commission for approval, the SGAT has neither been approved nor permitted to take effect.

(FLA52-53) The statute provides that a BOC meets the requirements of 271 (c)(1) if it meets the requirements of subparagraph (A) or (B) not (A) and (B). It appears the FCC interprets this to mean that Track A and B are mutually exclusive. Staff agrees.

### **III. CHECK LIST ITEMS**

#### **A. GENERAL CONDITIONS**

##### **1. Cost Based Pricing**

The first condition Congress placed on entry was to require stipulate the price at which interconnection and access had to be offered. DOJ makes the observation that if a competitor does not have certainty, investment and commitments cannot be made.

(DOJv) It has failed to demonstrate that it offers cost-based prices for unbundled network elements that permit entry and effective competition by efficient competitors.

(DOJ36) In our view, however, there are a variety of forward looking cost methodologies that are consistent with the statutory requirements, and with the Departments standard for evaluating whether markets are fully and irreversibly opened to competition.

(DOJ38-39) Some rate making methods that were designed to operate in and preserve a regulated monopoly environment would seem to be fundamentally inconsistent with that standard. For example, use of the "efficient component pricing rule" to establish prices for unbundled network elements would insulate a BOC's retail prices from competition, thereby discouraging entry in markets whose retail prices exceed competitive levels. Such effects would impede the transition from regulated monopoly telecommunications markets to deregulated, competitive markets, and would deprive consumers of the benefits of price competition and new investment in telecommunications services.

Whatever methodology is used, a reasoned application to the particular facts is needed. We expect in most cases, a BOC will be able to demonstrate this by relying on a reasoned pricing decision by a state commission. However, if the state commission has not explained its critical decisions, or has explained them in terms that are inconsistent with pro competitive pricing principles, the Department will require further evidence that prices are consistent with its Open Market Standard.

(DOJ39-40) Expectations concerning future prices can be as important, or even more important, than current prices. A market will not be "irreversibly" opened to

competition if there is a substantial risk that the input prices on which competitors depend will be increased to inappropriate levels after a section 271 application has been granted. Such price increase obviously could impair competitive opportunities in the future. As important, a substantial *risk* of such a price increase can impair competition *now*. Competitors that wish to use unbundled elements in combination with their own facilities will incur significant costs when they invest in their own facilities. Such investment will not be forthcoming *now* if there is a substantial risk that increases in the prices for complementary assets, i.e. unbundled elements, will raise the competitors total cost to a degree that precludes effective competition.

(DOJ41)The SCPSC has not articulated a forward- looking cost methodology. Indeed, it has stated that it "has not adopted a particular cost methodology." Instead the prices contained in the SGAT were incorporated from several sources, including the BellSouth/AT&T arbitration, existing tariff rates, and rates negotiated in interconnection agreements with other carriers. There is no explanation of the costs on which there are based.

In South Carolina, BellSouth has not demonstrated that current prices permit entry and effective competition by efficient firms, and there is great uncertainty concerning the prices that will be available in the future. Given this uncertainty, is not surprising that there is no real competition using unbundled elements now, or that competitors plans to compete in the future are subject to many contingencies.

(DOJ43)The SCPSC has expressly refused to articulate the methodology, if any, that it will use to establish "permanent rates," and thus, there is no assurance that the permanent rates will permit efficient competition using unbundled elements...

In short, the record in this application does not establish that either current or future prices for unbundled elements will permit efficient firms to enter and compete effectively.

(CA1-2)The primary requirement in section 252 (d) relevant to this proceeding is that the prices for interconnection and unbundled network elements (UNEs) must be cost based. Therefore, this Commission may not approve BellSouth's SGAT unless it has been demonstrated that the rates for UNEs are cost based, as defined in the Act.

It is clear from the record in this case that the prices for UNEs listed in BellSouth's SGAT are not cost-based as required by the Act... None of these rates have been evaluated by this Commission pursuant to the costing standards set forth in the Act. The FCC proxies and the methodology behind them have not been reviewed by this Commission. The prices in the ACSI agreement have not been supported by cost studies, since none were filed in that proceeding, and are subject to true-



up. With regard to tariff rates, this Commission has not reviewed the federal tariff rates, and has not reviewed the costs associated with South Carolina tariffs under the standards of the Act... BellSouth witness Sheye admitted on cross-examination that the company's cost studies regarding UNEs, while in BellSouth offices in Columbia, have not been filed or reviewed by any party to this case, including the Commission and its staff.

## **2. Operating Support Systems**

The second condition set by Congress was non-discriminatory access to functionalities and network elements. BST has performed poorly in making interconnection and access to parts of the network available on non-discriminatory terms.

(Dojv) It has also failed to demonstrate its ability to provide adequate non-discriminatory access to the operation support systems that will be critical to competitors ability to obtain and use unbundled elements and resold services.

(DOJ13-14) Checklist items must be *generally* offered to all interested carriers, be *genuinely* available, and be offered at concrete *terms*. A mere paper promise to provided a checklist item, or an invitation to negotiate, would not be a sufficient basis for the Commission to conclude that a BOC "is generally offering" all checklist items. Nor would such paper promises provide any basis for the Department to conclude that the market had been fully open to competition. Even in Track B states where there has been no request for access and interconnection to a facilities-based provider seeking to provide residential service, the legal and practical availability of all checklist items will be important to competition, since competitors may need such access and interconnection in the future, as well as to compete now to provide resale service, and service of all kinds to business customers.

(DOJ19-20) BellSouth's South Carolina revised SGAT is legally insufficient, because it fails to describe whether or how BellSouth will provide unbundled elements in a manner that will allow them to be combined by requesting carriers. First, the SGAT does not adequately specify *what* BellSouth will provide, the *method* in which it will be provided, or the *terms* on which it will be provided, and therefore there is no basis for finding that BellSouth is offering "non-discriminatory access to network elements in accordance with the requirements of sections 251 (c)(3) and 252 (d) (1)" as the checklist requires. Second, BellSouth's application does not demonstrate that it has the practical capability to provide unbundled elements in a manner that would permit competing carriers to comply them

(DOJ28-29) As to the current interfaces offered by BellSouth for pre-ordering and ordering functions, we conclude that BellSouth has failed to demonstrate that it will allow for effective competition, and BellSouth's ongoing efforts to address our concerns on this score are still incomplete. The record indicates numerous complaints from CLECs that have not yet been able to obtain sufficient information from BellSouth to permit them to complete development of their own OSSs. BellSouth systems have experienced little commercial use, but that limited experience suggested system inadequacies that have not yet been fully addressed. Moreover, the limited capacity of key systems suggests the performance problems are likely to be far more serious when competitors begin to order unbundled elements or resale services in competitively significant volumes.

In concluding that BellSouth has failed to comply with the checklist requirements governing OSS, we are mindful of SPCPS contrary conclusion. That conclusion was reached, however, before the commission provided its detailed decision on OSS issues in the Michigan order. Indeed, other state commissions in the BellSouth region, including the Alabama and Georgia commissions and the staff of the Florida commission, have expressed serious concerns about the adequacy of BellSouth's system in the wake of the commissions Michigan order.

(S20) Since the vast majority of local subscribers are current customers of the incumbent, if switching of customers is impeded then entry -- through any of the three modes -- would be stopped dead in its tracks. In California, for example, MCI and AT&T's efforts to enter the market were frustrated when PacBell's systems for processing resale orders broke down, causing substantial delays before customer could be switched to competitive carrier and leading those companies to end their marketing campaigns.

(A10) Pre-ordering... Among the deficiencies described in the Comments are the lack of the application-to-applications interface, discriminatory functionality, and inadequate capacity... Among the problems such CLECs face in the absence of application-to-application interfaces is a double entry problem.....

(A14) In addition to the problems arising from the lack of the application-to-application interface, BellSouth's preordering interface fails to meet the necessary standards because LENS does not offer parity with BellSouth's retail operations. While the Comments cite numerous deficiencies, we here focus on two: access to telephone numbers and service installation dates...

(A16) In sum, it appears that a CLEC's ability to provide competing services could be limited by BellSouth's policies rather than by the dictates of the marketplace. Accordingly, BellSouth's policies are contrary to its obligation to provide access to OSS functions on a non-discriminatory basis. We are aware that this issue

stems, in part, from the fact that BellSouth is functioning as the interim numbers administrator, but until a permanent -- and neutral -- administrator takes over, this issue compromises the non-discrimination principles set forth in the Act and the heart of our competitive standard.

(A 19) For example, a CLEC user needs to reserve the telephone number and schedule an installation date, the user would have to validate the address; reserve the telephone number, and then revalidate the same address before scheduling the installation date. Performing four ordering functions for a single order would require that the same address be entered and validated four times. The system used by BellSouth retail representatives requires an address be invalidated only once in the order negotiation process not once for every preordering function.

(A21-22) First... The interface presently supports the ordering of only business and residential POTS, PBX trunks, and DID trunks, not all the services that BellSouth retail representatives order electronically.

Second, BellSouth's ordering and provisioning systems are providing flow through only on a low portion of those types of orders which are currently supported... The remaining CLEC orders drop out of the systems and are process manually. [three times as frequently]

Third, even for orders submitted electronically, order rejections due to violations of BellSouth business rules, as well as jeopardy notifications, do not flow back to CLECs electronically: they drop out and are handled manually, typically sent to the CLEC via fax.

(A26) One of the worst problems is Bell South's failure to adequately disclose to competing carriers the internal editing and data formatting requirements and business rules necessary for orders to be accepted, not only at the BellSouth gateway, but also by BellSouth's internal OSSs... Under these circumstances, where adequate documentation and support appear to be lacking, general references to CLEC errors as a major factor in problems, such as rejection or lack of flow through, are unconvincing.

(A27) The Department concludes that BellSouth systems presently have limited capacity and have not been proven effective for handling large, competitively significant volumes of demand. Past experience suggests that limited commercial use at small volumes does not provide an adequate basis upon which to judge the performance of systems that will need to handle much larger volume of orders.

(A28) BellSouth has not demonstrated that its preordering systems are operationally ready... The existing capacity appears to the woefully inadequate

for either existing or foreseeable demand.

(A8) Accordingly, the SCPSC did not have the benefit of the Commission's Michigan decision, including the important discussion of OSS standards discussed above, when it reviewed BellSouth's SGAT and reached its decision. It is not clear how the SCPSC interpreted the standards it was applying or how those standards compare, in actual application to the standards described in the Michigan order.

(FLA 57-58) Staff believes that a state approved SGAT can be used to show that checklist items are available under section 271 (c)(2) (B) whether the BOC proceeds under Track A or Track B. This is not unlike having a tariff on file that lists what services are available. The inquiry does not end there, however, when determining whether the BOC is checklist compliant. The BOC may not simply rely on the fact that checklist items are contained in a state approved SGAT or in a state approved interconnection agreement. They must show that they are actually providing the checklist items or that the items are functionally available. This is consistent with the overall goals of the Act which is to open all telecommunications markets to competition

Staff does not believe, however, that a state approved SGAT should be the primary avenue for demonstrating checklist compliance in a Track A application. The main objective of section 271 (c)(1) (A), Track A, appears to be facilities-based competition, whereas, section 271 (c)(1) (B), is available absent a facilities-based competitor. Therefore, Track A applicants should first demonstrate checklist compliance through a state approved interconnection agreement.

### **3. Performance Measures**

One of the primary responses to the discrimination problem that has been proposed by the FCC and the DOJ is to insist on rigorous performance measures. Fully defined and implemented performance measurement systems are needed. BST's fall far short of what is required.

(DOJv) And, it has failed to measure and report all the indicators of wholesale performance that are needed to demonstrate that it is currently providing adequate access and interconnection and to ensure the acceptable levels of performance will continue after the section 271 authority is granted.

(DOJ46) Most significantly, BellSouth has not provided actual installation

intervals, instead relying on the "percentage of due dates missed." Yet the type of measurement upon which BellSouth relies is not sufficient to demonstrate parity: if BellSouth were to miss 10 percent of scheduled due dates for both BellSouth retail operations and CLEC customers, but missed the scheduled date by an average of one-day for its own customers and an average of seven days for CLEC customers BellSouth's measurement would be equal and yet would conceal a significant lack of parity.

(DOJ47) In addition, BellSouth has no performance measurements for pre-ordering functions; few measurements for ordering functions; and no measurements for billing timeliness, accuracy and completeness. BellSouth is also missing numerous significant measures involving service quality, operator services, Director Assistance, and 911 functions. Also, while BellSouth has committed to measuring firm order confirmation cycle, and reject cycle time, the development of these measurements is incomplete and results are not yet available. Collectively, these deficiencies prevent any conclusion that adequate non-discriminatory performance by BellSouth can be assured now or in the future.

(F31) Specific performance measures BellSouth should be required to provide include the following. "Include as an ongoing measurement" refers to performance measures included in interconnection agreements but not proposed as a permanent measure. Critical measures are in italics, and bold face indicates additional measures.

- Pre-Order OSS Availability
- *Pre-order System Response Times- Five key functions*
- *Firm Order Confirmation Cycle Time: Complete State-Specific Development*
- *Reject Cycle Time: Complete State-specific Development*
- Total Service Order Cycle Time
- *Service Order Quality: One or more suggested Measures*
- Ordering OSS Availability
- *Speed of Answer-Ordering Center*
- *Average Service Provisioning Interval*
- *Percent Service Provisioned Out of Interval: Include as an Ongoing Measurement*
- Port Availability
- Complete Order Accuracy
- *Orders Held For Facilities*
- *Repair Missed Appointment for UNE: Include as an Ongoing Measurement*
- Maintenance OSS Availability
- *Billing Timeliness: Include as an Ongoing Measurement*

- *Billing Accuracy*: Include as an Ongoing Measurement
- *Billing Completeness*: Include as an Ongoing Measurement
- Operator Service Toll Speed of Answer
- Directory Assistance Speed of Answer
- 911 Database Update Timeliness and Accuracy

On the basis of the above shortfall, I conclude that BellSouth has not provided sufficient performance measures in its application to make a determination of parity or adequacy in the provision of resale of UNE products and services to CLECs in the State of South Carolina.

### **C. SPECIFIC ITEMS**

The extensive nature of the checklist also reflects the fact that dismantling a century old monopoly that requires interconnection is a challenging problem. Out of the 14 points on the competitive check list which Congress imposed on the RBOCs, the Florida Staff concludes that BST has not met nine

#### **ITEM I : INTERCONNECTION**

(DOJ 16) BellSouth has failed to show that it is offering or providing access to unbundled elements in accordance with this requirement. Its interconnection agreements and SGAT failed to state adequately the terms and conditions under which BellSouth will provide un bundled elements so that they may be combined, and BellSouth has failed also to demonstrate that it has the practical ability to provide unbundled elements to requesting carriers with satisfactory performance in commercial quantities.

(DOJ18) Prior to the Iowa Utilities Board decision, BellSouth and the SCPSC had taken the position that new entrants could not order unbundled network elements which when combined would permit them to offer services duplicating BellSouth retail services...

After the Iowa Utilities Board decision, BellSouth submitted and the SCPSC approved a revised South Carolina SGAT on which BellSouth relies for this section 271 application. No additional hearings were held on this revised SGAT and the SCPSC order approving the revised SGAT contains no discussion of

specific findings that its provisions would allow requesting carriers to combine network elements in a reasonable and non-discriminatory manner... As we explain below, this offering does not satisfy the checklist requirements regarding unbundled elements...

(FLA82) MCI states that in order to provide competitive local service at the same level of quality as BST it must be able to terminate traffic throughout a local calling area. MCI cited its experience in Memphis where calls between BST and Southwestern Bell's (SBC's) local service area were blocked by BST. BST stated it would not pass MCI traffic to SBC until MCI had established an interconnection agreement with SBC. MCI says that BST must be required to terminate calls that MCI cannot in areas served at least in part by BST, so that MCI customers will not be isolated.

(FLA 84-85) BST's general response to many parties' criticisms of its checklist performance in relation to their own agreements, is that ALECs are merely trying to delay competition. In fact, in its brief, BST states that the ultimate test in this proceeding that BST must meet is not whether BST has fulfilled all the terms of its agreements with ALECs but whether it has made interconnection generally available to ALECs, as required by section 252 (f) and 274. Staff does not agree that is all that is required of BST.

Staff concludes that BST has not fulfilled all the terms of its agreements, and has not made a showing that it has complied with the requirements of the Act because carriers cannot compete meaningfully under the terms of their agreements. Staff therefore recommends that BST has not satisfied the requirements of checklist item No. I, and therefore fails on this issue.

As noted in this issue, since some interconnection provisions have not yet been established, there is no way to conclude, until they have been implemented, whether or not BST has complied with the terms of the Act or ALEC agreements. Physical collocation is a prime example, as well as the problems surrounding virtual collocation.

#### ITEM ii: UNBUNDLED NETWORK ELEMENTS

(DOJiv) BellSouth has failed to demonstrate that it offers access to unbundle network elements in a manner that allows requesting carriers to combine such elements in order to provide telecommunications services, as required by the Act.

(DOJ, 23, 24, 25) In terms of implementing any arrangements necessary to

combine elements, we would look to see how BellSouth would perform any additional functions necessary to allow elements to be combined by a CLEC. As it is not even clear what those practices will be, BellSouth has not yet demonstrated that it possesses the technical capability to satisfy this requirement in a reliable, commercially acceptable manner. Thus, for all the reasons stated above, BellSouth has not satisfied its burden of showing that it has the practical ability to provide these elements as required by the checklist.

BellSouth's failure to establish that it will offer unbundled elements in a manner that will allow other carriers to combine them to offer telecommunications services has substantial implications for the development of competition in South Carolina...

If unbundled elements are provided in a manner that requires CLECs to incur large costs in order to combine them, many customers -- especially residential customers -- may not have facilities based competitive alternatives for local service for a considerably longer period of time...

The implication in BellSouth's South Carolina revised SGAT that it will require CLECs to establish co-location facilities in order to combine elements also has important competitive ramifications. Such requirement would entail substantial cost and delay CLECs wishing to use a combinations of elements.

In short BellSouth's failure to show checklist compliance in this area should not be regarded as a mere technicality. Rather that failure carries with it a substantial threat to the viability of competition using unbundled network elements, one of the key entry vehicles established by the 1996 Act.

(FLA124) LENS and EDI do not incorporate the same level of online edit capabilities as BST's internal interfaces. There is, therefore, a higher chance that orders will contain mistakes, which will be rejected by the downstream systems. The result of the limited edit capability is that ALEC orders will take longer to actually the provisions, than BST orders.

(FLA125) BST has not demonstrated that its systems can process the number of orders per day that it claims it can. The consulting firm hired by BST to perform an analysis of the local Carrier Service Center (LCSC), stated in its report that BST has missed service implementation dates. In addition, BST has experienced problems providing firm order confirmation's (FOCs) in a timely manner. This results in the ALEC not knowing when service is actually implemented, and has resulted in billing statements being sent to the end-user by both BST and the ALEC. Although, BST claims that it is currently receiving approximately 200 orders per day, BST has not demonstrated that it can effectively handle this low



volume of orders in an accurate and timely fashion. Therefore, staff does not believe that BST can currently meet service order demand requirements.

(FLA128) A major area of concern with respect to the interfaces offered by BST is the amount of manual intervention that is required on behalf of an ALEC service rep. The primary problem is that BST does not provide a pre-ordering interface that provides these functions in essentially the same time and manner as BST's internal system. In addition, the interface must apply the capability to interconnect the ALECs own internal OSS to BST's OSS. BST has not provided technical data to requesting carriers to permit the development of such interconnection.

#### **ITEM iv: UNBUNDLED LOOP TRANSMISSION**

(FLA165) Staff agrees with ICI that BellSouth has not conclusively determined whether it can bill for UNEs using the CAB billing systems or some other alternative... Staff agrees with MCI that such long provisioning intervals limit the ALECs reasonable opportunity to compete in the local market. Again, until such time that BellSouth can provide performance data on its operations and those of competing carriers, the ALECs allegedly will be subjected to lessen quality of service than BellSouth.

(FLA167) Staff believes that BellSouth's provision of unbundled local loops at tariffed rates and then applying necessary credits to give the appearance of UNEs pricing is in violation of the Act's requirements for this checklist item. Staff notes that BellSouth has problems with billing of unbundled loops, such as billing for UNEs as unbundled elements and at the specified UNE rates. BellSouth's ability to bill for the unbundled local loop as an unbundled element and at the specified UNE rate is critical in making an affirmative determination as to BellSouth's compliance with checklist item iv. Specifically this commission ordered BellSouth to bill for UNEs using a CAB-formatted billing at minimum. BellSouth did not conclusively say it could bill for UNEs using the CAB billing system, or provide the billing in CAB-format. In the instances whereby BellSouth provided bills, the ALECs expressed dissatisfaction and the fact that the elements are not billed as UNEs. Therefore, staff is unable to ascertain that BellSouth has unbundled the local loop from other services.

#### **ITEM v: LOCAL TRANSPORT**

(FLA174) Based on the evidence in the record that BellSouth cannot bill for usage

sensitive UNEs, staff believes that BellSouth does not meet this checklist item...

#### ITEM vi: LOCAL SWITCHING

(FLA175) Based on the evidence in the record, BellSouth has not provisioned all of the unbundled local switching requested by ALECs. BellSouth has experienced significant billing related problems in the provisioning of these unbundled local switching.

#### ITEM vii: EMERGENCY, DIRECTORY AND OPERATOR SERVICES

(195-196) AT&T said that it has not yet requested selective routing in Florida due to all of the problems that BST has run into trying to provide selective routing to AT&T in Georgia

Staff believes that since BST can selectively route its own calls, then BST should provide selective routing to which ever ALEC or ILEC requests it. BST has not demonstrated that it can provide selective routing, and therefore this is a discriminatory practice.

AT&T also complains about BST branding its DA services as "BST," but not providing AT&T the proper opportunity to do this same. AT&T further stated that AT&T has not ordered branding in Florida because of all the problems that BST has faced in Georgia.

BST replies that AT&T can order unbranded or special branded service if they so choose. While BST states this, it does not appear that BST is currently able to provide this service. While it is obvious that BST and AT&T are working together to iron out the problems associated with branding, as well as selective routing, it does not appear that BST is in a position to provide these services at this time.

MCI stated that it does not have access to all of the information in the directory assistance database that BST has access to. MCI cannot get the numbers from an ALEC or an ILEC unless that ALEC or ILEC gives permission to BST. Therefore, while BST can get the ILEC customers information, MCI cannot.

Staff would agree with the FCC's interpretation of the non-discriminatory requirements for the provision of directory listings as an unbundled element and believes that BST's refusal to provide access to all is a violation of this non-discriminatory provision. BST essentially has control to some extent as to the circumstances to which carriers place directory listings in their database. Staff

believes the agreements that BST has entered into has limited the directory listings available to all customers to only the listings that LECs, either ILECs or ALECs, want its competitors to see. Staff doesn't believe that is appropriate violates the non-discrimination provisions of the Act.

(196) AT&T/ MCI argue that the rates used by BST for operator call completion services do not comply with section 252 (d) (1) (a) (I) and section 252 (d) (1) (A) (ii) because the arbitrated rates are not based on cost and because they are interim. AT&T/MCI contend that since the rates were determined using the Hatfield model or tariffed rates, they cannot be in compliance with the requirement of section 252.

While some of the objections raised by the intervenors did not constitute discrimination by BST, AT&T/MCI's contention regarding the rates, and MCI's contention regarding the access to databases demonstrated discrimination by BST in the provision of directory assistance services. Staff believes that with all of the information obtained during this proceeding, that at this time, it appears that BST has not met the requirements of providing non-discriminatory access to directory listings.

#### ITEM xi: NUMBER PORTABILITY

(FLA240-241) Staff also points out that in Order No. PSC-96-1579-FOF-TP, the Florida Commission determined that LERG and RI-PH were technically feasible and required BST to provide these methods as well as RCF and DID upon request. Staff notes that ultimately BST must demonstrate that it provides all requested technically feasible interim number portability arrangements... Staff points out that AT&T indicates that it ordered RI-PH in Georgia, but that BST has yet to provide this service. Staff maintains that AT&T states that if RI-PH does not work in Georgia, AT&T does not expect the servers to work in Florida... Additionally, staff believes that the testimony presented by BST does not sufficiently demonstrate that it is capable of providing RI-PH on a commercial basis. Although AT&T has not formally requested RI-PH in Florida, staff notes that the provision of RI-PH should be no different in Florida than Georgia. While staff acknowledges that BST is working in good faith to provide RI-PH AT&T, we do not believe that BST can provide this service on a commercial basis with minimum impairment of functionality, quality, and reliability at this time. Thus, based on the testimony, staff does not believe that BellSouth has met the requirements to satisfy checklist item xi.

#### ITEM xiii: RECIPROCAL COMPENSATION

(FLA251-252) BST sent a letter dated August 12, 1997, to ALECs with whom it has existing agreements, stating that ISP traffic is jurisdictionally interstate, and therefore ineligible for reciprocal compensation. In the letter, BST stated that its would not pay for calls its customers made to ISPs served by ALECs, and "would make every effort" not to bill ALECs for calls their customers made to BST's ISPs. The letter was sent after testimony was filed in this case, and, therefore, the issue was only explored at hearing.

FCCA cites its members' opinion that BST's actions constitute a breach of contract, the violation of the dispute resolution clauses in the agreements, and an active of bad faith on BST's part.

Witness Varner acknowledges that the issue is in dispute and is the subject of two proceedings at the FCC.

WorldCom, states that BST has a made unilateral attempt to begin withholding compensation for calls to WorldCom's local exchange customers who are Internet providers, despite BST's contractual agreement to compensate WorldCom for such calls. WorldCom states that it views BST's actions as a breach of interconnection agreement.

#### ITEMS xiv: RESALE

(FLA 263) However, based on the evidence in this proceeding, staff is unable to confirm the actual number of services that BellSouth has resold in Florida. Nevertheless, it appear that the ALECs have not had problems with resold services once they have received them, with the exception of a voice mail service problem that MCI has experienced; however, ALECs are experiencing many problems with the interfaces, operational support systems, and billing of the correct wholesale discount rates, contrary to the non-discriminatory requirements of the Act and the applicable FCC and FPSC orders.